

1 COURT OF COMMON PLEAS

2 HAMILTON COUNTY, OHIO

3 - - -

4 STATE OF OHIO,

)

5 Plaintiff,

)

) CASE NO: B-9807452

6 vs.

)

7 FREDRICK HALL,

)

8 Defendant.

)

9 - - -

10 Transcript of Proceedings

11 - - -

12 APPEARANCES:

13 WILLIAM ANDERSON, ESQ.

14 On behalf of the Plaintiff.

15 JAMES RADER, ESQ.

16 ELIZABETH ZUCKER, ESQ.

17 On behalf of the Defendant.

18

19 BE IT REMEMBERED that upon

20 the jury trial of this cause, on May 4th, 1999,

21 before the Honorable Steven Martin, a said

22 judge of the said court, the following

23 proceedings were had, to wit:

24

25

1 MORNING SESSION, MAY 4, 1999

2 THE COURT: Okay. Mr. Rader, it's
3 my understanding that you're not going to
4 put on any additional evidence, but there
5 is a stipulation that you want to enter
6 into. Let's do it now.

7 MR. RADER: Your Honor, I believe
8 that relates to Defendant's Exhibits 15
9 and 16.

10 Number 15 is a request submitted by
11 Officer Huffman for fingerprint analysis
12 of the three .380 shell casings in this
13 case, and the attempt to develop latent
14 fingerprints resulted in a negative
15 result.

16 Defendant's Exhibit 16 is -- there
17 was a latent print of good quality
18 retrieved from the automobile, which was
19 compared with the fingerprint of Fredrick
20 Hall. That form for the request for
21 analysis was also submitted by Officer
22 Huffman.

23 THE COURT: That's Defendant's
24 Exhibits 15 and 16.

25 MR. ANDERSON: Judge, the State

1 will stipulate to those two exhibits.

2 THE COURT: Do you have any other
3 evidence that you want to submit?

4 MR. RADER: Your Honor, also, there
5 was a stipulation as to Defendant's
6 Exhibit 13, which is the medical records
7 from Correctional Medical Services, Inc.,
8 which is the facility at the Justice
9 Center. I believe the prosecutor will
10 stipulate to those.

11 MR. ANDERSON: So stipulated.

12 THE COURT: And Defendant's Exhibit
13 Number 14 is medical records from
14 University Hospital, beginning with
15 treatment on the 3rd of October, 1998. I
16 believe the prosecution will agree to
17 stipulate to those as well.

18 MR. ANDERSON: That's correct.

19 THE COURT: Okay. All right. Any
20 other exhibits or evidence?

21 MR. RADER: Yes, we have some other
22 exhibits, your Honor.

23 THE COURT: I know, defense
24 exhibits. We'll go in order of
25 introduction: Defendant's Exhibit 5,

1 it's a chart. Do you want that admitted?

2 MR. RADER: Please excuse me.

3 Can we back up to 4, which is
4 marked as Defense Exhibit 4, which is the
5 tape that was authenticated the other day
6 by the gentleman who came down from the
7 police communications.

8 THE COURT: All right.

9 MR. RADER: That's numbered 4
10 because it was numbered such in the
11 motion to suppress hearing.

12 THE COURT: Okay.

13 Defendant's 4, the tape, do you
14 have something to give them to play it
15 on?

16 MR. RADER: Yes.

17 THE COURT: Okay. Any objection,
18 Mr. Anderson?

19 MR. ANDERSON: No.

20 THE COURT: Defendant's 5, some
21 chart that you did; do you want that
22 introduced?

23 MR. RADER: Yes, your Honor.

24 THE COURT: Defendant's 6, another
25 chart?

1 MR. RADER: Right. Any objection
2 to 5 or 6?

3 MR. ANDERSON: No.

4 MR. RADER: Number 7 and Number 8,
5 your Honor, if it please the Court, are
6 the blowups, the computer generated
7 chronologies from police communications.

8 THE COURT: Any objection?

9 MR. ANDERSON: No.

10 THE COURT: Defendant's 9 is a
11 subpoena?

12 MR. RADER: Yes.

13 MR. ANDERSON: Object to that.

14 MR. RADER: You do?

15 THE COURT: Sustained. Defendant's
16 9 won't come in.

17 Defendant's 10, 11, and 12, those
18 were the blowups, weren't they?

19 MR. RADER: Your Honor, Number 10
20 was a transcript that Ms. Zucker used one
21 page of to cross-examine Officer Baker.

22 MR. ANDERSON: Objection.

23 THE COURT: Sustained. That will
24 be admitted. What are 11 and 12?

25 MR. RADER: Those are, again,

1 enlargements of computer-generated
2 materials from police communications.

3 THE COURT: You object?

4 MR. ANDERSON: No.

5 THE COURT: They'll be both be
6 admitted.

7 (Defendant's Exhibit 11 and 12
8 admitted.)

9 THE COURT: Defendant's 13, 14, 15,
10 and 16 are all stipulated in; is that
11 correct?

12 MR. RADER: That's correct. May I
13 digress to Defendant's Exhibit Number
14 10?

15 THE COURT: Uh-huh.

16 MR. RADER: Mr. Bailey was asked if
17 he made these statements, et cetera,
18 which included that one page. He looked
19 at the page here in court from the
20 witness stand, authenticated that is, in
21 fact, what he said. I would ask that one
22 page be admitted.

23 THE COURT: You indicated before,
24 and it's the way that he recalled it, it
25 was for impeachment. If you impeach him,

1 you have the testimony from which you can
2 impeach him.

3 MR. ANDERSON: Not only that, he
4 admitted that's what he said.

5 MR. RADER: Okay. With the
6 prosecution's agreement that he admitted
7 what he said in the transcript, we have
8 no problem.

9 MR. ANDERSON: He said what he
10 said.

11 THE COURT: He said whatever is in
12 the record he said.

13 All right. You'll rest.

14 Bring the jury in. We'll do the
15 stipulation as to Defendant's Exhibits
16 13, 14, 15 and 16. You will rest on the
17 record.

18 Mr. Anderson, I understand you have
19 one rebuttal witness.

20 MR. ANDERSON: I do.

21 THE COURT: We will go directly
22 from that rebuttal witness -- are you
23 going to introduce any more exhibits?

24 MR. ANDERSON: No.

25 THE COURT: We will go directly

1 from rebuttal into closing. How long do
2 you need to close? I'm thinking of an
3 hour each side. Is that enough time?

4 MR. RADER: Yes.

5 THE COURT: In advance, Mr. Rader,
6 are you or Ms. Zucker going to do the
7 close or both or what?

8 MR. RADER: I believe I will, your
9 Honor.

10 THE COURT: Okay. Mr. Anderson,
11 how much time do you want reserved for
12 rebuttal?

13 MR. ANDERSON: It doesn't matter.
14 If I run over 45 minutes in my opening
15 portion, I have talked too long anyway.

16 THE COURT: If you hit 45 minutes
17 in your opening portion, I will tell you.

18 Mr. Anderson, you have 15 minutes
19 left. You do what you want.

20 MR. ANDERSON: Thank you.

21 THE COURT: Okay. Then we will
22 probably take a break, maybe send them to
23 lunch before we read the charge.

24 Krista is finishing up the charge.
25 The charge, itself, is done. She's

1 finishing up the verdict forms right now.

2 okay. Are all exhibits on this table the
3 exhibits that have been admitted?

4 MR. RADER: Right.

5 THE COURT: Do you need that thing
6 during your closing? If you do, pull it
7 out now.

8 MR. RADER: I don't believe it's
9 worthwhile -- to answer your question.

10 THE COURT: You don't need it?

11 MR. RADER: No.

12 (The jury entered the courtroom at
13 10:37 a.m.)

14 THE COURT: I apologize for the
15 delay, ladies and gentlemen.

16 Does the defense have some
17 stipulations that they want to state?

18 MR. RADER: Yes, your Honor, if it
19 please the Court, the prosecution and I
20 have agreed to stipulate the admission
21 into evidence of some medical records
22 from the Hamilton County Justice Center.

23 That's Exhibit Number 13.

24 Exhibit Number 14 are the medical
25 records from the University Hospital

1 Medical Center.

2 Exhibit 15 is a report from the
3 Police Department requesting fingerprint
4 analysis of the three cartridge cases.
5 That is the report submitted to the lab
6 by Officer Huffman.

7 And Exhibit Number 16 was, again, a
8 report submitted by Officer Huffman
9 requesting the examination of a
10 fingerprint found in the automobile. The
11 prosecution and I have agreed to
12 stipulate those documents into evidence
13 without objection.

14 THE COURT: Okay. Thank you. So
15 stipulated.

16 MR. ANDERSON: Yes, your Honor.

17 THE COURT: Any further witnesses
18 you want to present for the defense?

19 MR. RADER: No, your Honor, defense
20 rests.

21 THE COURT: Any rebuttal from the
22 State of Ohio?

23 MR. ANDERSON: I have one
24 additional rebuttal witness, your Honor.

25 THE COURT: Okay.

1 MR. ANDERSON: The State will call
2 Officer Huffman back to the stand,
3 please.

4 THE COURT: Officer, come up. You
5 have been previously sworn. You're still
6 under oath in this case.

7 THE WITNESS: Yes.

8 THE COURT: Sit down and pull the
9 microphone over to you. Okay. Mr.
10 Anderson.

11 MR. ANDERSON: Thank you, your
12 Honor.

13 P.O. HUFFMAN
14 being first duly sworn, was examined and
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ANDERSON:

18 Q. Officer Huffman, you testified in
19 this matter last week, I believe.

20 A. Yes, sir.

21 Q. Okay. You're still under oath.

22 what I will do is I will hand you
23 what's been marked for identification
24 Defendant's Exhibit 15. Can you identify what
25 that exhibit is, sir?

1 A. Yes, sir. It's a photo card
2 evidence submission sheet. Anytime we submit
3 evidence to the coroner's lab or our lab, we fill
4 one of those out.

5 Q. You previously identified as
6 Defendant's Exhibit 3 three shell casings. Did
7 you do anything with the shell casings once they
8 were recovered?

9 A. Yes, sir. I only recovered one of
10 the spent shell casings, which was in Mr. Hall's
11 car.

12 Q. Okay.

13 A. I placed that in an evidence
14 submission envelope, and the other two were
15 already placed in the other two by other
16 officers. And we sent them to the fingerprint
17 criminalist, and I asked to see if there were
18 fingerprints on those shell casings.

19 Q. According to Defendant's Exhibit
20 15, officer Ron Camden, who does the fingerprint
21 analysis, was unable to lift any latent prints
22 from the shell casings?

23 A. Yes, sir.

24 Q. You indicated the shell casings
25 were placed in different envelopes, the one that

1 was recovered from the car and two that were
2 recovered from the scene?

3 A. Yes.

4 Q. Look at State's Exhibit 10. Today
5 those shell casings are, in fact, contained in
6 the same envelope?

7 A. Yes, sir. After a day or so, after
8 the results of the fingerprint tests, I requested
9 that the criminalist send them to the coroner's
10 lab for a striation test, which is a test to
11 determine -- if all three casings were fired from
12 the same gun, they leave marks and striations in
13 the shell casings.

14 Q. And you have also got a report from
15 the coroner's office indicating that two of the
16 shell casings were fired from the same gun, and
17 one was not fired from the same gun; is that
18 correct?

19 A. That's correct, yes, sir.

20 Q. Can you tell which particular shell
21 casings were recovered from the car and the ones
22 that were recovered from the scene?

23 A. Not now, no.

24 Q. Why is that?

25 A. Evidently, the criminalist or the

1 lab technician, whoever, after the striation test
2 or before the striation test, they were placed
3 together.

4 Q. Inadvertently?

5 A. Yes, sir.

6 Q. Okay. Now, I will also hand you
7 what's marked as Defendant's Exhibit 16. Can
8 you identify what that particular exhibit is?

9 A. Yes, sir. At the time that I was
10 called in, at the time I processed the car, I had
11 no idea if there was going to be more victims or
12 whatever, so I took fingerprints from the
13 automobile.

14 Q. How many viable latent fingerprints
15 did you obtain from the automobile?

16 A. I obtained one quality print, which
17 means it could be identified, but it came back
18 without being Fred Hall's, who I submitted.

19 Q. Did you submit anybody else?

20 A. No.

21 Q. How about Mr. Davis?

22 A. I believe he was one of the
23 juveniles, or they were both juveniles at the
24 time. I cannot recall. No, sir, I did not
25 submit anybody else.

1 Q. So the fingerprint that was
2 recovered from the car, it was not traced to the
3 defendant. we don't know whose fingerprint that
4 is; is that correct?

5 A. That's correct.

6 Q. Now, how long have you been on the
7 police force?

8 A. I have been a member of the police
9 division for 27 years.

10 Q. What can you tell about gunshot
11 residue tests?

12 A. From what I understand, there's a
13 two-hour period, a window between the time that
14 supposedly someone has fired a weapon and the
15 time that the test should be taken.

16 Q. Okay. Do you know why that is?

17 A. Apparently they can rub it off on
18 their shirt. If there is -- if they have gone
19 from the scene and out of sight and hiding or
20 whatever, they can rub it in the grass area and
21 get it off, or apparently it loses its
22 effectiveness in two hours. I have never been in
23 that division.

24 Q. Okay. According to your
25 understanding, there's a two-hour window within

1 which a gunshot-residue test can be performed?

2 A. Yes.

3 Q. Was there a gunshot-residue test
4 performed in this case on the defendant?

5 A. No, sir, to my knowledge, there was
6 not.

7 Q. Did you perform one?

8 A. No.

9 Q. Why didn't you?

10 A. When I met Mr. Hall, the shooting
11 was close to three hours old.

12 Q. That would be outside the window
13 where gunshot residue findings are valid?

14 A. Yes, sir, and they lost track of Mr.
15 Hall for a while.

16 Q. Did the defendant ever ask you to
17 give him a gunshot residue test?

18 A. No, sir, not as I recall.

19 Q. Okay. Did the defendant, when you
20 interviewed him -- after you advised him of his
21 rights contained in State's Exhibit 1, did the
22 defendant ever ask for a lawyer?

23 A. No.

24 Q. Did the defendant ever indicate he
25 didn't want to talk to you?

1 A. No, he was very cooperative talking
2 to me.

3 Q. Did you use any threat of force
4 against the defendant in order to get him to
5 talk to you?

6 A. No, sir.

7 Q. Did you ever threaten the defendant
8 that you're going to charge his wife and his son
9 with murder and things like that?

10 A. No, sir.

11 Q. Did you force him to go back up
12 with you to look for the gun?

13 A. No, sir. He suggested he go back
14 up.

15 Q. He suggested that he go back up and
16 look for the gun?

17 A. I advised him anything he could do
18 to help with the investigation would help. If we
19 could recover the gun, that was a big item, so it
20 doesn't fall into the hands of a juvenile or a
21 child.

22 Q. That's when you suggested you go
23 back up and look for the gun?

24 A. Yes.

25 Q. The gun was never recovered?

1 A. That's correct.

2 MR. ANDERSON: Thank you. I have
3 no further questions.

4 THE COURT: Any cross-examination?

5 CROSS-EXAMINATION

6 BY MR. RADER:

7 Q. Good morning, Officer Huffman.
8 Officer, isn't it almost a universal police
9 practice for officers to mark items of evidence
10 that they recover?

11 A. Yes, sir, that's correct.

12 Q. Can you tell me why none of these
13 three cartridge cases were marked where they
14 were recovered?

15 A. A .380 casing is very small. I
16 didn't want to ruin any latent prints or any of
17 the striation marks.

18 Q. Isn't it a fact that you didn't see
19 these casings or didn't have them in your
20 possession until after 4 o'clock in the morning?

21 A. That's correct.

22 Q. Officer Fromhold recovered these
23 casings, didn't he?

24 A. I recovered one from the front seat
25 of the Honda Accord.

1 Q. Can you tell who marked these
2 casings -- and you had the opportunity to look
3 at them -- A, B, and C?

4 A. No, sir, I cannot.

5 Q. Have you seen the crime laboratory
6 report as to these three casings?

7 A. Yes, sir, I believe that I have.

8 Q. And the prosecution, I think, has
9 marked it as an exhibit. It indicates that
10 these were submitted as Exhibit Q-1, and at the
11 time that they were submitted, they were marked
12 A, B and C. Can you shed any light on that?

13 A. No, sir.

14 Q. Would you agree that that's -- it's
15 an important item of evidence in this case that
16 the odd shell, the one that didn't match, had
17 come from the defendant's car, Mr. Hall's car?

18 A. Two of the shells matched. Which
19 two, I don't know. I don't understand what
20 you're asking -- your question.

21 Q. Well, if the two casings laying on
22 the street down on Republic, if that could be
23 established through scientific evidence or could
24 be established that they came from the same gun,
25 then wouldn't that be important?

1 A. Yes, sir. It could also be one that
2 was matched in the car and one on the street. I
3 don't know which two matched.

4 Q. Dr. Parrott, the coroner, indicated
5 to me a couple of weeks ago --

6 MR. ANDERSON: Objection.

7 THE COURT: Sustained.

8 Q. Is there a new gunshot residue test
9 kit recently distributed throughout the police
10 department?

11 A. I have no knowledge of that.

12 Q. Has that ever been a part of your
13 training?

14 A. No, sir.

15 Q. What is your rank in the police
16 department?

17 A. I am a police investigator for
18 District 1.

19 Q. Have you ever used a gunshot
20 residue kit to try to preserve that kind of
21 evidence?

22 A. No, sir.

23 Q. And how long have you been on the
24 department?

25 A. Twenty-seven years. It will be 27

1 in July.

2 Q. Was Mr. Hall handcuffed during his
3 ride back up to Windsor?

4 A. He was placed in a marked police
5 cruiser, I believe he was, yes, sir. As I
6 recall, he was.

7 Q. Do you know if he was handcuffed
8 behind him; his hands were handcuffed behind
9 him?

10 A. I know he was kind of complaining
11 about his arm. By procedure, he should have been
12 handcuffed behind his back. As I recall, he was,
13 but it's been awhile.

14 MR. RADER: No further questions,
15 your Honor. Thank you.

16 MR. ANDERSON: Nothing further.

17 THE COURT: All right. Officer
18 Huffman. Thank you very much for your
19 time. Have a seat in the hallway.

20 (Whereupon, Officer Huffman was
21 excused.)

22 THE COURT: State have any further
23 evidence?

24 MR. ANDERSON: No, your Honor.

25 THE COURT: State rest?

1 MR. ANDERSON: Yes.

2 THE COURT: Anything else from the
3 defense?

4 MR. RADER: No, your Honor.

5 THE COURT: Ladies and gentlemen,
6 we'll now go directly into closing
7 arguments.

8 And Mr. Anderson, you put that
9 podium wherever you want to.

10 MR. ANDERSON: Thank you.

11 THE COURT: Closing arguments of
12 counsel are, as opening arguments, not
13 evidence.

14 You have now heard all of the
15 testimonial evidence, though you have not
16 seen the physical exhibits nor have you
17 heard my instructions as to the law. So
18 nothing counsel say in the next two hours
19 is going to be evidence.

20 However, it is a perfectly
21 permissible part of the trial. Counsel
22 will be able to summarize what they
23 believe the evidence has shown and what
24 they believe the conclusions are that you
25 should come to.

1 I have allotted each side one hour
2 total for their closing arguments. It's
3 a total of two hours.

4 Mr. Anderson will speak first and
5 last, and Mr. Rader will speak in
6 between.

7 Mr. Anderson, go ahead.

8 MR. ANDERSON: Thank you, your
9 Honor.

10 May it please the Court, counsel,
11 ladies and gentlemen of the jury, on
12 October 17, 1998, this defendant,
13 Fredrick Hall, took out a loaded .380
14 caliber handgun and he shot Kevin Davis
15 and Johann Hart on 14th and Republic
16 Street at approximately 3:15 in the
17 morning. The evidence is clear in this
18 case.

19 Proof beyond a reasonable doubt.

20 Listen to the definition of proof beyond
21 a reasonable doubt that Judge Martin
22 gives to you. He will tell you that
23 after having carefully consider and
24 compared the evidence, you cannot say
25 that you are firmly convinced of the

1 truth of the charges.

2 If you look at the evidence in this
3 case carefully, there are some things
4 that are beyond dispute. The elements in
5 this indictment are beyond dispute.

6 There is no question that Kevin Davis --
7 somebody attempted to cause physical harm
8 to Kevin Davis by means of a deadly
9 weapon, a handgun. There is no doubt
10 that somebody caused serious physical
11 harm to Kevin Davis by shooting him
12 through the shoulder.

13 There is no doubt that somebody
14 attempted to cause serious physical harm
15 to Johann Hart by means of a deadly
16 weapon. There is no doubt that somebody
17 attempted to cause -- actually did cause
18 -- serious physical harm to Johann Hart
19 by means of a deadly weapon.

20 There is no question that somebody
21 shot a gun off at those two individuals
22 with purpose to kill them, with purpose
23 to murder them, shooting Johann Hart
24 through the neck and in the shoulder,
25 shooting him while he is lying on the

1 street, shooting Kevin Davis in the arm.

2 This question is a question of

3 identity. There is no question that

4 Johann Hart and Kevin Davis were shot.

5 There is no question they were shot with

6 a gun. And there is no question that

7 whoever shot them was trying to kill

8 them.

9 Ladies and gentlemen, the evidence

10 proves that this defendant, Fredrick

11 Hall, is, in fact, the individual who did

12 that. Take a look at the evidence. You

13 have got photographs, State's Exhibits 2

14 through 6. These are photographs of the

15 car that Fredrick Hall was driving on the

16 night of the shooting.

17 We heard testimony from his wife

18 yesterday that this is, in fact, her car.

19 We heard testimony from his wife

20 yesterday that he wasn't around when

21 these shootings occurred. We heard

22 testimony from his wife that he wasn't at

23 the house, he had the car keys, and that

24 he had been gone for a period of time

25 before the shooting occurred.

1 we heard testimony from Johann
2 Hart and Kevin Davis that, in fact, the
3 driver of this car was the assailant. We
4 have heard testimony from Officer
5 Fromhold, when he arrived on the scene,
6 he got a license plate number that
7 matches this car that was driven by the
8 assailant.

9 He put out that license plate
10 number, and Officer Bailey, finding out
11 where that license plate number was
12 registered to, figures this person might
13 be driving that way. He stakes it out,
14 and he sees this car driven by this
15 defendant.

16 And when this defendant sees
17 officer Bailey, he takes off at a high
18 rate of speed -- 60, 70 miles an hour --
19 down Gilbert Avenue and through Eden
20 Park, running stop signs, running red
21 lights.

22 Officer Bailey got a good look at
23 him. He pulled up beside him. The
24 defendant turned and looked at officer
25 Bailey, and he took off.

1 Officer Bailey loses the car
2 momentarily. Officer Neack responds to
3 the area. They find the car. And what
4 do they find when they find the car, this
5 car, the car that was used in the
6 shooting, the car that there is no
7 dispute this gunman drove? They find
8 him, this defendant, Fredrick Hall,
9 hiding in the bushes.

10 And what does he tell the police
11 then? He tells Officer Neack, I was just
12 out buying shaving cream. I am just out
13 for a little stroll in the night buying
14 shaving cream. The defendant admitted he
15 told Officer Neack that he was out buying
16 shaving cream.

17 When he takes the witness stand and
18 tells you yesterday or the day before, he
19 told you that he was going to drive that
20 car. He was going to the car with the
21 car keys and move the car.

22 This defendant was personally
23 capable of driving the car. Much as he
24 would have you believe otherwise, he was
25 perfectly capable of driving the car that

1 night, and he was perfectly capable of
2 pulling the trigger of a gun and striking
3 down two young men.

4 Take a look at that, because I know
5 there is going to be a lot of talk about
6 these boards, what they mean, what they
7 say. And I will be the first to admit,
8 you have a shooting occurs at 3:15 in the
9 morning. It's dark on an inner-city
10 street. Crack cocaine is around. we
11 know that. Kevin Davis had crack cocaine
12 on him.

13 we have witness statements from two
14 people that we attempted to bring in,
15 that the defense attempted to bring in
16 and we couldn't locate.

17 One of them was allegedly a
18 crackhead -- or Jimmie Martin. He is the
19 one that gave the police officer the
20 license plate number off of this car.

21 The suspect is a male black, no
22 further description. Suspect, small
23 brown, possible Toyota. It's on
24 Defendant's Exhibit 8. You will hear
25 that tape. I am sure defense counsel

1 will play the tape for you about the
2 calls coming in.

3 The bottom line is in certain of
4 these items they say, "Three people in
5 the car, driver is a shooter, passenger
6 is a shooter," things like that.

7 I don't know -- I don't know who
8 put those reports out, and I don't know
9 where they came from. I know they show
10 up here.

11 Think about this -- think about the
12 testimony that Johann Hart gave you. He
13 sees the defendant in a car. He
14 approaches the car. He and the defendant
15 are talking. They get into some type of
16 an argument.

17 Kevin Davis is across the street.
18 He comes over. Johann Hart tells you
19 this crackhead, Jimmie, gets in the car.

20 He says, "Hey, I will take you
21 where there is some crack cocaine."
22 That's two people in the car right there,
23 according to Johann Hart, according to
24 whatever witnesses there were.

25 We have a witness down the street.

1 this female, who says there were probably
2 three people in the car. She sees the
3 crackhead get in the car. This defendant
4 pulls out a .380, shoots Johann Hart in
5 the neck, shoots him in the shoulder and
6 Kevin Davis in the arm. The crackhead
7 jumps out of the car, according to
8 Johann, and takes off.

9 You have got four people at the
10 scene. Two are shot, one jumps in the
11 car, one jumps out. Jimmie, the
12 crackhead -- I think he was referred to
13 as John also -- the one in the car, gave
14 them the license. That's the person this
15 witness down the street saw get out of
16 the car.

17 We heard testimony from officer
18 Fromhold indicating one of the witnesses
19 he interviewed talked about somebody
20 getting out of the car and going through
21 one of the person's pockets that is shot.
22 That was the crackhead. He gets out of
23 the car. He comes around and he tries to
24 help Johann Hart as he was shot in the
25 neck. Look at these for what they are

1 worth.

2 I know this: This car they are
3 referring to is this car right there, the
4 car driven by that defendant identified
5 by Johann Hart, Kevin Davis, and Dave
6 Bailey.

7 And we know from his wife's
8 testimony he wasn't at the house. He had
9 gone out for a while. She didn't know
10 how long. She was laying in bed, and he
11 had the car keys.

12 And we also know his son was at the
13 house because, if you remember, when
14 Police Officer Eatrides showed up at the
15 house and started talking to the
16 defendant's wife, she initially said her
17 son wasn't there. But the police were at
18 that location for approximately 40
19 minutes outside that house. Nobody could
20 come in or get out of that house.

21 The defendant certainly didn't come
22 out of that house. And what did he tell
23 you? What did Eatrides tell you? He
24 told you, as he was at that location out
25 in front of that house, he heard the

1 radio broadcast concerning the chase, the
2 chase officer Bailey was engaged in of
3 that car driven by that defendant, when
4 Dexter Hall was, in fact, at home.

5 If you look at one of these boards,
6 it says "Cancel that call for Dexter
7 Hall. He has been at home, and he's been
8 there for a long time."

9 You also heard about the
10 black jacket. Look at State's Exhibit
11 Number 7. The defendant was wearing a
12 black jacket that night. Admittedly, he
13 was not clean shaven. One of the
14 descriptions says "clean shaven." Who
15 did that come from? Did that come from a
16 witness who was 150 feet down the street,
17 saw a car going by, and heard shots going
18 off?

19 This defendant, Fredrick Hall, is,
20 in fact, the shooter in this case.

21 Look at the testimony of Johann
22 Hart and Kevin Davis. When Officer
23 Huffman gets this defendant down at the
24 district, he takes this photograph of
25 him, and he puts him in the photo lineup.

1 what did he do? He goes up to the
2 hospital. He goes up to talk to Johann
3 Hart. Johann is in the hospital. He had
4 been shot through the neck, been shot in
5 the back, and he said, "Johann, can you
6 give me a description of the guy that
7 shot you?"

8 Johann says, "If I see a picture of
9 that guy, I will tell you. I can point
10 him out. I know who he is."

11 He shows him this exhibit, State's
12 Exhibit Number 7. What does Johann Hart
13 do? He picks out Fredrick Hall, and he
14 picks out this defendant, the defendant
15 that Officer Bailey saw driving this car.

16 The interesting thing about it is
17 that when -- and I'll refer to State's
18 Exhibit Number 8 -- when Johann Hart made
19 the identification of Fredrick Hall, this
20 photograph, Mr. Hall's picture was
21 actually right here. It was in the
22 center. And if you look at State's
23 Exhibit Number 8, this is a Polaroid
24 photograph of the photo lineup as it
25 existed when Officer Huffman showed it to

1 Johann Hart for identification purposes.

2 Officer Huffman, being aware of the
3 relationship between Johann Hart and
4 Kevin Davis, decides he is going to mix
5 things up a little bit. Instead of
6 leaving the defendant's picture in the
7 center, he is going to switch it around.

8 What does he do? He goes and talks
9 to Kevin Davis who has been released from
10 the hospital.

11 He said, "Kevin, can you give me a
12 description of the guy?"

13 He says, "If I see him, I will know
14 who he is."

15 Again, he gives him State's Exhibit
16 Number 9 in the current form, and State's
17 Exhibit Number 9 is a photocopy of this
18 Polaroid, copy of it as he showed it to
19 Kevin Davis.

20 Kevin Davis says, "That's the guy,"
21 without hesitation.

22 Johann Hart and Kevin Davis didn't
23 get a chance to talk. "Let's conspire.
24 Let's identify this guy."

25 Look at the identification in this

1 case. we have got two witnesses
2 independently identifying Fredrick Hall
3 as the shooter at different times, at
4 different places, without ever having
5 talked to each other. we have got
6 officer Bailey, who sees him operating
7 the motor vehicle.

8 Identification. This case is about
9 identification.

10 The evidence is clear beyond a
11 reasonable doubt that this defendant, in
12 fact, was the shooter that night.

13 You heard what he said from the
14 witness stand. I asked him, "why don't
15 you tell us what you told the police that
16 night?" Finally, he fessed up about
17 telling him he was out looking for
18 shaving scream.

19 He said, I don't remember what he
20 told the police that night. All I
21 remember is they threatened me. They did
22 this. They did that. I don't remember
23 what I told him.

24 Let's take a look what he did tell
25 them. You heard from Officer Neack that

1 when he Mirandized the defendant, the
2 defendant was aware of his rights, and he
3 made a knowing, intelligent, and
4 voluntary waiver of those rights. He
5 told him he was out buying shaving cream.
6 He stuck with that story for three hours.

7 Officer Neack transports him from
8 Windsor Avenue down to the district to
9 wait for Officer Huffman to show, the
10 investigator on the case.

11 Again, they Mirandize him. This
12 one is in writing, State's Exhibit 1.
13 You will have a chance to look at this.
14 You have heard talk about this. When
15 Officer Neack and Huffman explained the
16 defendant's Miranda Rights to him, he
17 refused sign this waiver. He said, "I'm
18 not going to sign it."

19 Listen to the instructions that
20 Judge Martin gives to you, because he
21 will tell you that his refusal to sign
22 this waiver doesn't mean he can't
23 intelligently waive his rights, which he
24 did. You do not need a written rights
25 waiver to take statements from somebody.

1 That's the law.

2 He says he asked for an attorney.

3 we heard Officer Huffman say he didn't
4 ask for an attorney.

5 You heard him say he asked for a
6 gunshot residue test. You heard Officer
7 Huffman tell you he never asked for a
8 gunshot residue test.

9 You heard him tell you the police
10 threatened to arrest his son and charge
11 him with murder and arrest his wife and
12 charge her with murder.

13 Officer Huffman told you this that
14 didn't happen. we haven't heard from
15 Dexter. His wife didn't say -- on the
16 witness stand yesterday, she didn't say
17 that.

18 He said everybody in this case is
19 wrong, except him. Johann is wrong in
20 his identification. Kevin Davis is wrong
21 in his identification. Officer Bailey is
22 wrong in his identification. Officer
23 Neack is wrong in reading him his rights.
24 Huffman is wrong in reading him rights.

25 I asked him, "What did you tell the

1 police? Tell the ladies and gentlemen of
2 the jury what you told the police that
3 night."

4 "I don't remember."

5 I will tell you who does remember
6 is Officer Huffman, because he wrote it
7 down, and you heard what he said. He
8 said, "we gave him his Miranda Rights.
9 He agreed to talk to us. He didn't want
10 to sign the waiver, and this is what he
11 said:" He said, "He picked up Dave and
12 went to 14th and Republic Street."

13 I always wondered about this until
14 yesterday. I wondered about Dave. Who
15 is Dave? we found out the answer
16 yesterday when his wife took the witness
17 stand. She said, "I lent the car to Dave
18 earlier in the day.

19 "Dave had the car. We were in
20 Dayton. I don't know where the car was.
21 My son, Dexter, got the keys back from
22 Dave. Dexter gave the keys to my
23 husband, and he was gone. He was out of
24 the house at the time of the shooting.
25 He had the car keys. He was gone."

1 what does he do? He figures, well,
2 the shaving cream story hasn't worked so
3 far. I will try something else. I will
4 tell them I picked up Dave, and we went
5 down to 14th and Republic.

6 He tells Police Officer Huffman
7 that the two subjects who robbed and shot
8 him two weeks ago were there, Johann Hart
9 and Kevin Davis; that Dave begins to
10 shoot. He was on the passenger side next
11 to the driver, and he shot these guys.

12 Then he tells officer Huffman that
13 he drove off, dropped off Dave somewhere
14 and told him to hide the gun. That's the
15 second story. The first is the shaving
16 cream story. The second is Dave was in
17 the car, Dave did the shooting, and I
18 dropped off Dave and told him to hide the
19 gun.

20 what does he say later? He says,
21 "If the car is released, I will tell the
22 police the truth."

23 This time it's stated that Dave was
24 in the back seat behind him and fired the
25 shot. Then he stated he would take the

1 police to where the weapon was, up on
2 Windsor Avenue, where he was arrested.

3 He voluntarily goes with the
4 police. They are not forcing him,
5 holding a gun to his head.

6 He says, "I will try to take you
7 where the gun is." They look for the
8 gun. They are unsuccessful. The gun is
9 gone. He has either pitched it during a
10 high-speed chase with Officer Bailey
11 somewhere in Eden Park, or he, in fact,
12 he planted it somewhere up around Windsor
13 when he was hiding behind a tree. The
14 gun has not been recovered.

15 why couldn't he remember what he
16 told Officer Huffman? Because it's not
17 true. The truth is, he was out that
18 night looking to score some crack cocaine
19 or something. He sees these two
20 individuals. He talks to Johann Hart.
21 They get in some type of argument. He
22 pulls out a gun and he fires. Why? I
23 don't know.

24 Let's take a look at some of the
25 other evidence in this case. I'm sure

1 you will hear a lot about the shell
2 casings. I will be honest. I wish the
3 shell casings hadn't been mixed up. Do
4 you know what? In the final analysis of
5 this case, it doesn't matter. This case
6 is a case about identity. we have three
7 shell casings recovered from the scene;
8 one recovered from the car, all of them
9 .380 caliber.

10 The police did what they should
11 have done, submit them for fingerprints,
12 which they did.

13 Referring to Defendant's Exhibit
14 No. 15, the shell casings, that was an
15 attempt to go take fingerprints from
16 them, which was unsuccessful.

17 Fingerprints are hit or miss. Sometimes
18 we get them; sometimes we don't. On
19 objects as small as shell casings,
20 sometimes they don't. They shipped them
21 up to the coroner's lab to have Bill
22 Schrand actually make another
23 examination.

24 Look at this report. This is
25 another fingerprint taken off the car.

1 They lifted one latent print off the car
2 and compared it to the defendant's.
3 That wasn't his. Does that mean
4 anything? This one doesn't. It could be
5 anybody's fingerprint. Let's take a look
6 at Bill Schrand's report. He indicates
7 three discharged .380 caliber shell
8 casings were submitted to him. That
9 Q-1(W) and Q-1(C). They are marked now
10 Q-1(A) Q-1(B) and Q-1(C). And Q-1(B)
11 Q-1(C) were fired from the same firearm.
12 Q-1(A) was not.

13 we know two of these three shell
14 casings were fired from the same gun, and
15 one was not. I cannot tell you where
16 they came from. I don't know if the one
17 in the car doesn't match the other two.
18 I don't know if the one in the car might
19 have matched the one recovered from the
20 street. I can tell you that is not a
21 fatal flaw in the case. It's not. It's
22 a case of identity.

23 Did Fredrick Hall shoot these two
24 individuals on October 17, 1998? The
25 evidence says beyond a reasonable doubt

1 that he, in fact, did.

2 There were some other exhibits
3 contained in here. I think they were
4 photographs of shell casings. Where were
5 recovered? A little bit of Johann Hart's
6 blood was in the street, where the
7 defendant left him as he sped off in the
8 car. Here's the defendant in the
9 infamous black jacket that came across
10 one of those reports.

11 Take a look at these medical
12 records quickly. Let's look at
13 Defendant's Exhibits 13 and 14 that we
14 stipulated to. Defendant's Exhibits 13
15 and 14 are medical records from the
16 defendant's gunshot wound that he
17 received a couple weeks prior to this
18 shooting. And I know there is a date on
19 here somewhere. But look through the
20 medical reports.

21 The defendant, on the witness
22 stand, talked about being shot in the
23 arm, this arm that he can't use, but it
24 doesn't seem to inhibit him from tying
25 his shoes and putting his tie on, taking

1 his sling off and showing you where that
2 bullet wound was with that arm that was
3 going to disable him or not allow him to
4 drive the car.

5 He was, in fact, shot. There is no
6 question about it. But look at the
7 medical reports. He didn't report it for
8 like three, four or five hours after it
9 was done. He claims he got robbed. He
10 claims he got shot. And he doesn't go to
11 the hospital immediately.

12 When he does go to the hospital, he
13 doesn't file a police report about being
14 robbed.

15 Let's see, he goes in the hospital
16 for a gunshot wound, and what is the
17 history of the present illness? "The
18 patient is a 42-year-old Afro-American
19 male with a past history" -- I cannot
20 pronounce, but -- "stab wounds and other
21 gunshot wounds." He has been stabbed
22 before. He has been shot before.

23 Handguns are nothing new to Mr. Hall.

24 Judge Martin will indicate to you
25 that one of the things that you're called

1 upon to assess is the credibility of
2 witnesses that you hear from, including
3 the defendant. One of the ways you test
4 the credibility of witnesses is you use
5 your everyday tests that you use in
6 everyday life.

7 One of the things that you're
8 allowed to consider for credibility
9 purposes are prior felony convictions.
10 When the witness was up on the stand, I
11 asked him, "Have you been convicted of a
12 theft offense or any other type of felony
13 offense?"

14 "Yes." He's been convicted of
15 receiving stolen property from '89,
16 receiving stolen property of a motor
17 vehicle, receiving stolen property of a
18 motor vehicle, burglary, CCW. He was
19 just in a car where a handgun was located
20 up in Dayton. You can consider those for
21 purposes of assessing the defendant's
22 credibility.

23 I want to talk a little bit about
24 the fleeing and eluding. There is no
25 question that the operator of the car was

1 the defendant, and his operation of a
2 motor vehicle after Officer Bailey turned
3 on the lights and siren is, in fact,
4 fleeing and eluding. That created a
5 substantial risk of serious physical harm
6 to anybody on the street -- 60 to 70
7 miles an hour in a 35-mile-an-hour zone,
8 running red lights and stop signs.

9 Ladies and gentlemen, listen
10 carefully to the instruction on
11 reasonable doubt that Judge Martin gives
12 to you. It's evidence of such character
13 that you would be willing to act and rely
14 upon it in the most important of your own
15 affairs.

16 Ladies and gentlemen, consider the
17 testimony of Johann Hart, consider the
18 testimony of Kevin Davis, consider the
19 testimony of Officer Bailey, consider the
20 testimony of Officer Huffman, consider
21 the testimony of Officer Eatrides,
22 consider the testimony of Officer Neack,
23 and see if this is just some big
24 conspiracy these individuals have hatched
25 to railroad him.

1 we have got all of these witnesses
2 on this side. Credibility shouldn't be
3 questioned. The identification process
4 was made versus the defendant who says,
5 "They are all wrong. I wasn't there. I
6 didn't do it. I don't know what you're
7 talking about. I was just out buying
8 shaving cream."

9 Ladies and gentlemen, carefully
10 consider the evidence, assess credibility
11 of the witnesses that you have heard
12 from, reach a true and just verdict in
13 this case, a true and just verdict in
14 this case of guilty, as charged, against
15 that defendant, Fredrick Hall, on all
16 four counts of felonious assault, two for
17 using a handgun to shoot Johann Hart in
18 the street, two for using a handgun to
19 shoot down Kevin Davis in the street, two
20 for attempted murder of Johann Hart and
21 Kevin Davis, and one for fleeing and
22 eluding.

23 Judge Martin will also read to you
24 what are called specifications. There
25 are three specifications contained in

1 each of the first six counts.

2 Specification 1 is that the defendant had
3 on or about his person or under his
4 control a firearm while committing the
5 offenses.

6 Specification Number 2 is that the
7 defendant had on or about his person or
8 under his control and he possessed a
9 firearm, he brandished it, indicated he
10 possessed it, or used it to facilitate
11 the offense.

12 And the third specification is that
13 the defendant fired the firearm from a
14 motor vehicle. And again, the evidence
15 is by proof beyond a reasonable doubt
16 that this defendant, Fredrick Hall, in
17 fact, was the shooter on October 17,
18 1998.

19 THE COURT: Thank you, Mr.
20 Anderson.

21 Mr. Rader.

22 MR. RADER: Your Honor, would a
23 ten-minute recess be appropriate?

24 THE COURT: I don't know. Let's
25 just do it.

1 Does anybody on the jury need to
2 take a break to go to the bathroom? If
3 you do, say so. Let's just go forward.
4

5 MR. RADER: Good morning, ladies
6 and gentlemen. Ladies and gentlemen, an
7 older appellate judge once said to me,
8 "Let's have a little more light and a
9 little less heat," and I'm going to make
10 every effort that I can to shed some
11 light on this situation, sort the
12 evidence out, if you will.

13 I have a feeling, ladies and,
14 gentlemen, as a preliminary matter that I
15 want to address to you. I hope that when
16 you ladies and gentlemen go home and talk
17 to your family about this case and your
18 friends that you will tell them that you
19 had a wonderful time, that it was a good
20 experience. And I say that because I
21 have a respect for the jury system.
22 There are blemishes; the blemishes are
23 not on the system, the blemishes are the
24 shortcomings of the people participating
25 in the system.

1 I cannot even think of voting and
2 sitting on a jury. I hope you can go
3 home and say, I had a great experience, a
4 wonderful experience. I saw how the jury
5 system works. It's marvelous. The
6 shortcomings are not in the system. The
7 shortcomings are human frailties.

8 Officer Bailey was the officer at
9 the corner of McMillan and Gilbert. He
10 came into court and said that the car
11 stopped for a red light and that Mr. Hall
12 looked at him, and he was sitting there
13 in his car. Mr. Hall was sitting right
14 next to him, and he got a good look.

15 Ms. Zucker brought out on
16 cross-examination a quite different
17 scenario. If I can quote from that
18 testimony on cross-examination:

19 "Right. And he, as he passed me,
20 he looked at me. I looked back. He
21 proceeded to the intersection. He had
22 the green light. I pulled away from the
23 curb, and at that point, Mr. Hall began
24 to flee in his Honda. And for -- at that
25 point, he came up behind me. He was